



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Handwritten initials

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/896,032

06/29/2001

Christoph Seidel

HUBR-1067.3 DIV

2111

24972

7590

02/27/2004

FULBRIGHT & JAWORSKI, LLP

666 FIFTH AVE

NEW YORK, NY 10103-3198

EXAMINER

WORTMAN, DONNA C

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/896,032

Applicant(s)

SEIDEL ET AL.

Examiner

Donna C. Wortman, Ph.D.

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 Jan 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☒ Newly proposed or amended claim(s) 40-48 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

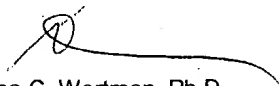
Claim(s) allowed: 40-48.

Claim(s) objected to: _____.

Claim(s) rejected: 37-39 and 49.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Donna C. Wortman, Ph.D.
Primary Examiner
Art Unit: 1648

Art Unit: 1648

Claims 37, 40, 43, 46, and 47 were proposed to be amended in the amendment after final submitted 14 January 2004.

The amendment has been entered.

Objection and rejection withdrawn

The entry of the after final amendment overcomes the objection of claims 40-48 set out in the final rejection on page 5 as being dependent on a rejected base claim.

Claims 40-48 are allowed.

The amendment to claim 37 to recite "human" has overcome the rejection under 35 U.S.C. 103(a) as being unpatentable over JP06074956 in view of Beach et al. (Journal of Medical Virology 36(4):226-227, 1992).

Rejections maintained


Regarding the rejections of claims 39 and 49 under 35 U.S.C. 112, second paragraph; claims 39 and 49 under 35 U.S.C. 102(b)/103(a) over JP06074956; claim 37 under 35 U.S.C. 103(a) over JP06074956 in view of Vallari et al. (Journal of Clinical Microbiology 30(3):552-556, 1992); and claim 38 under 35 U.S.C. 103(a) over JP06074956 in view of Vallari et al. and of US Patent Re. 32,696 to Schuurs et al., Applicant's remarks and arguments have been noted but have not been found persuasive as they rely on the newly submitted Declaration of Dr. Wienhues-Thelen. The Declaration has not been considered since it is not directed solely to issues that were newly raised by the Examiner in the final rejection. Claims 37, 38, 39 and 49 remain rejected.

Art Unit: 1648

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna C. Wortman, Ph.D. whose telephone number is 571-272-0913. The examiner can normally be reached on Monday-Thursday, 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Donna C. Wortman, Ph.D.
Primary Examiner
Art Unit 1648

dcw